Supreme Court of the United States

October Term, 1977

No. 77-1165

GARY EVERETT THOMPSON

and

MYRON LESTER TILTON,

Petitioners,

vs.

STATE OF OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To The Court of Appeals
For Stark County,
Ohio

TOM BORCOMAN
Stark County Public Defender's Office
Canton, Ohio 44702

RALPH W. ROSS
JOSEPH W. CALABRETTA
5292 Fulton Drive, N.W.
Canton, Ohio 44718
(216) 499-8960

Attorneys for Petitioners

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS

Opinions Below 1
Jurisdiction 2
Question Presented 2
Constitutional Provisions Involved 2
United States Constitution, Amendment VI 2
United States Constitution, Amendment XIV, Section 1 3
Statement of the Case 3
Reason for Granting Writ 8
Conclusion 18

Appendices:

A. Decision and Journal Entry of the Court of Appeals of Stark County, Ohio (August 24, 1977) A1
B. Judgment Entry of the Supreme Court of Ohio (November 25, 1977) A14
C. Order of the Supreme Court of Ohio Overruling Motion to Certify Record (November 25, 1977) A15
D. Order of the Supreme Court of Ohio Denying Rehearing (December 15, 1977) A16
E. Motion for New Trial Filed in Common Pleas Court (October 14, 1976) A17
F. Judgment Entry of the Court of Common Pleas in Thompson Case (October 19, 1976) A19
G. Judgment Entry of the Court of Common Pleas in Tilton Case (October 19, 1976) A20

TABLE OF AUTHORITIES

Cases

Avery v. Alabama, 308 U.S. 444, 446 (1940) 8
Beasley v. United States, 491 F.2d 687, 696 (6th Cir. 1974) 9
Brubaker v. Dickson, 310 F.2d 30, 37 (9th Cir. 1962) 9
Castillo v. Estelle, 504 F.2d 1243, 1244 (5th Cir. 1974) 10
Commonwealth v. Saferian, 315 N.E.2d 878 (Mass. 1974) 9
Faretta v. California, 422 U.S. 806, 826 (1975) 16
Gideon v. Wainwright, 372 U.S. 335, 352-3 (1963) 8
Glasser v. United States, 315 U.S. 60 (1942) 9, 10
Johnson v. Zerbst, 304 U.S. 458, 464 (1938) 16
King v. Beto, 429 F.2d 221, 225 (5th Cir. 1970) 9
Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977) 9
McMann v. Richardson, 397 U.S. 759, 771 (1970) 8, 9
Moore v. United States, 432 F.2d 730, 736-737 (3d Cir. 1970) 9
People v. Stovall, 40 Ill. 2d 109, 239 N.E.2d 441 (1968) 13
People v. White, 183 Colo. 417, 514 P.2d 69 (1973) 9
Porter v. United States, 298 F.2d 461 (5th Cir. 1962) 17
Powell v. Alabama, 287 U.S. 45, 71 (1932) 8
Reece v. Georgia, 350 U.S. 85, 90 (1955) 8
Risher v. State, 523 P.2d 421 (Alaska 1974) 9
State v. Harper, 57 Wis. 2d 543, 205 N.W.2d 1 (1973) 9
State v. Hester, 45 Ohio St. 2d 71, 79-80, 341 N.E.2d 304, 309-310 (1976) 9
State v. Kahalewai, 54 Haw. 28, 501 P.2d 977 (1972) 9
State v. Thomas, 203 S.E.2d 445 (W. Va. 1974) 9

State v. Williams, 207 N.W.2d 98 (Iowa 1973) 9
United States ex rel. Miller v. Myers, 253 F. Supp. 55 (E.D. Pa. 1966) 13, 14
United States ex rel. Williams v. Twomey, 510 F.2d 634, 641 (7th Cir. 1974) 9
United States ex rel. Williamson v. LaVallee, 282 F. Supp. 968 (E.D. N.Y. 1968) 10
United States v. Braniff Airways Inc., 428 F. Supp. 579, 583 (1977) 12
United States v. DeCoster, 487 F.2d 1197, 1202-1203 (D.C. Cir. 1973) 9
United States v. Easter, 539 F.2d 663, 666 (8th Cir. 1976) 9
United States v. Jeffers, 520 F.2d 1256 (7th Cir. 1975) 14, 15, 16

Other Authorities

ABA Standards 15
Code of Professional Responsibility
Ethical Consideration 5-1 15
Ethical Consideration 5-14 15
United States Constitution
Amendment VI 2, 6, 8, 9
Amendment XIV 2, 3, 6, 8

Supreme Court of the United States

October Term, 1977

No. .....

GARY EVERETT THOMPSON

and

MYRON LESTER TILTON,
Petitioners,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To The Court of Appeals
For Stark County,
Ohio

Petitioners, by and through their attorneys, Tom Borcoman, Ralph W. Ross, and Joseph W. Calabretta, pray that a Writ of Certiorari issue to review the judgments heretofore entered against them by the Court of Appeals for Stark County, Ohio.

OPINIONS BELOW

The Court of Common Pleas, Stark County, Ohio, rendered no opinion. The unreported opinion of the Court of Appeals for Stark County, Ohio, is printed as Appendix A, p. A1. The Supreme Court of Ohio rendered no opinion.

JURISDICTION

The Supreme Court of Ohio dismissed Petitioners' appeal and overruled Petitioners' motion for leave to appeal on November 25, 1977. Petitioners' motion for re-hearing was denied on December 15, 1977. Said orders are set forth at Appendix B, p. A14, C, p. A15, and D, p. A16 respectively. The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, §1257(3).

QUESTION PRESENTED

Whether Petitioners' Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated where their chief appointed counsel had a conflict of interest in that he simultaneously represented a material State's witness involved in the crime without the knowledge or assent of Petitioners, and where said chief counsel subsequently represented said State's witness in a related civil action.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution
Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 30, 1975, a fire at a local restaurant was reported to the Massillon, Ohio, Fire Department. An explosion later occurred while the building was burning causing the deaths of three firemen. The investigation that ensued revealed that arson was involved.

Two days after the fire, a meeting was held between George Bevington, Michael Scott and Fred Delasandro, all of whom subsequently testified on behalf of the State at Petitioners' trial. Mr. Bevington, who was not in the business of selling gasoline, had supplied Delasandro, the main prosecution witness at Petitioners' trial, with gasoline to fill approximately 60 five-gallon plastic containers on the two evenings immediately preceding the fire. As a result of this meeting, Bevington consulted his attorney, Harry Schmuck, who subsequently arranged a meeting between himself, Bevington, and the Stark County Prosecutor. The Prosecutor has conceded that the information Bevington provided was "crucial to the investigative stage of this case."[1]

---

1. Brief of the State of Ohio in the Court of Appeals for Stark County, Ohio, page 11.

On March 31, 1976, Petitioners Gary Thompson and Myron Tilton were indicted on three (3) counts of aggravated murder with aggravated specifications and three (3) counts of complicity in aggravated murder arising out of the fire. Accomplices in said indictment were said to be Louis Battista, owner of the restaurant, Joseph Paone, manager of the restaurant, and Delasandro. Petitioners received appointed counsel because of their indigent status. The chief appointed counsel was private attorney Schmuck who had previously represented Bevington in his negotiations with the Prosecutor, although neither Schmuck, nor the Prosecutor, nor the Trial Court informed Petitioners of this relationship. Mr. Tom Borcoman of the Stark County Public Defender's Office was appointed assistant counsel.

After his indictment, Delasandro entered into negotiation with the Prosecutor, and in exchange for his testimony in the trials of the four alleged accomplices, was guaranteed that he would be allowed to plead to one (1) charge of arson and that all remaining charges would be dismissed.

Petitioners waived trial by jury on July 28, 1976, and proceeded to trial on the same day before a three-judge panel. During the trial, Delasandro testified that he and Petitioners burned the restaurant for the purpose of collecting insurance on said building, some three to four months after he had been contacted by Petitioners due to his expertise in this field. Following the direct examination of Delasandro by the Prosecutor, Petitioners' chief counsel Schmuck allowed the assistant counsel to cross-examine Delasandro, despite the fact that he is a seasoned trial lawyer while the assistant counsel is a young attorney who was not in the position to cross-examine the State's main witness as effectively. Yet, later it was the chief counsel himself who chose to cross-examine Bevington,

the State's material witness whom Schmuck had represented in the meeting with the Prosecutor prior to indictment in the same case for which he represented the Petitioners. A review of the transcript shows that in his cross-examination of his client, Schmuck was merely making excuses for the conduct and activity of his client Bevington.[2] It is undisputed that neither Petitioners' attorney Schmuck nor the Prosecutor made any mention of States' witness Bevington's various meetings and discussions which were held between those parties prior to the indictment of Petitioners. Furthermore, neither Schmuck nor the Prosecutor asked Bevington any questions which would reveal the fact of the meeting between Bevington, Delasandro and Scott only two days after the fire had occurred. It is submitted that this evidence was purposely suppressed during the trial so that the Trial Court and these Petitioners would not discover the conflict of interest of Schmuck and State's witness Bevington.

If Bevington's involvement with Delasandro immediately after the fire had been brought to light rather than covered up, an effective argument could have been made that Bevington had been a co-conspirator in the arson, and not Petitioners. This argument was in fact developed in a subsequent trial of co-defendants Battista and Paone, who were acquitted of all charges. In essence, the issue faced now is how could these Petitioners' rights to a fair trial be protected when their chief counsel cooperated with the Prosecutor in an arrangement to protect the interest of State's witness Bevington, to the prejudice of Petitioners. The words "farce and mockery" are appropriate terms to describe the representation of Petitioners by their chief counsel Schmuck.

---

2. Transcript of Case No. 76-6169, *State of Ohio v. Myron Tilton and Gary Thompson*, pages 348 to 352.

At the conclusion of the trial on July 2, 1976, Petitioners were found guilty of three (3) counts of aggravated murder with aggravated specifications. Following this decision, prior to sentencing, and during the subsequent jury trial of the other named co-defendants, Battista and Paone, the body of James Tilton, Petitioner Myron Tilton's brother, was discovered on land occupied by State witness, Michael Scott. (Scott had met with Bevington and Delasandro at Bevington's home two days after the fire.) Scott was indicted in Carroll County, Ohio, for this death, and Delasandro was implicated by Scott in the same indictment. As previously stated, during the Battista-Paone trial, the conflict of interest of Petitioners' chief counsel with State's witness Bevington first came to Petitioners' attention.

The federal question sought to be reviewed by this Court was raised in the Court of first instance on October 14, 1976, when Petitioners filed a motion for a new trial based on the newly discovered evidence of their chief counsel's denial of their Sixth and Fourteenth Amendment right to the effective assistance of counsel. Said motion is set out as Appendix E, p. A17. During the hearing on the motion for a new trial, Petitioners' chief counsel Schmuck admitted that he had represented State's witness Bevington and had arranged a meeting with the Prosecuting Attorney for Stark County, Ohio, sometime thereafter. He further stated that "I can't say whether I did or didn't tell (the Petitioners) that I sent (Bevington) to the Prosecutor."[3]

Both Petitioners stated in affidavits filed with the motion for new trial that they were not informed by their

3. Transcript of Hearing on Motion for New Trial in Case No. 76-6169, page 28.

chief counsel Schmuck that he had represented and advised Bevington in regard to matters that were the subject matter of their trial. The Trial Court refused to allow Petitioners to testify at the hearing on the motion for new trial.[4] Petitioners' former chief counsel Schmuck has since gone on to represent Bevington in a related civil action for damages filed by the next-of-kin of the firemen killed in the explosion at the restaurant fire.[5]

The Motion for a new trial was overruled at the hearing on October 18, 1976, and Petitioners were ordered to serve sentences for the balance of their natural lives on each of the three counts of aggravated murder with specifications. The judgment entries overruling the motion for new trial of Petitioner Thompson and Petitioner Tilton are set forth at Appendix F, p. A19 and G, p. A20, respectively.

On November 9, 1976, timely notice of appeal was filed, and on August 24, 1977, the Court of Appeals for Stark County, Ohio, affirmed the judgment. The opinion of the Court is set out as Appendix A, p. A1. Petitioners' Assignment of Error No. Four (4) to the Court of Appeals which raised the federal question presented in this petition is included in said opinion at page A11. On September 16, 1977, timely notice of appeal was filed; and on November 25, 1977, the Supreme Court of Ohio dismissed Petitioners' appeal and overruled Petitioners' motion for leave to appeal, said orders being set forth at Appendix B, p. A14 and C, p. A15, respectively. Proposition of Law No. 4, presented in the Supreme Court of Ohio, raised the

4. *Id.* page 19.

5. The Court of Common Pleas, Stark County, Ohio, Case No. 76-1041, *Linda S. Arnold, et al. v. Fred Delasandro, et al.*

federal question sought to be reviewed in this Court.[6] On December 3, 1977, a timely motion for re-hearing was filed; and on December 15, 1977, the Supreme Court of Ohio overruled the motion. Said order is set forth as Appendix D, p. A16.

REASON FOR GRANTING WRIT

THE DECISION BELOW REGARDING THE CONFLICT OF INTEREST OF PETITIONERS' CHIEF TRIAL COUNSEL IS CONTRARY TO THE SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES AND APPLICABLE DECISIONS OF THIS COURT.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the assistance of counsel. *Gideon v. Wainwright*, 372 U.S. 335, 352-3 (1963). The United States Supreme Court has long held that the term "assistance of counsel" means "effective" assistance of counsel. *Powell v. Alabama*, 287 U.S. 45, 71 (1932); *Avery v. Alabama*, 308 U.S. 444, 446 (1940); *Reece v. Georgia*, 350 U.S. 85, 90 (1955). In *McMann v. Richardson*, 397 U.S. 759, 771 (1970), the Court reiterated the effective assistance of counsel requirement and asked whether counsel's advice fell "within the range of competence demanded of attorneys in criminal cases. . . . (I)f the right to counsel is

6. Proposition of Law No. 4, presented in the Supreme Court of Ohio: A defendant's rights under the Sixth Amendment and the Fourteenth Amendment to the United States Constitution are violated when the defendant is deprived of the effective assistance of counsel during trial, wherein chief trial counsel appointed by the Court had a conflict of interest in that chief counsel represented a material State's witness who was involved in the crime prior to trial, during trial, and after trial, which constitutes prejudicial error for which a new trial should be granted.

to serve its purpose, defendants cannot be left to the mercies of incompetent counsel."

On the basis of these holdings, a majority of the courts have rejected the previous "farce or mockery" test of assistance of counsel in favor of the rule, expressed in several different ways, that a criminal defendant has the right to counsel rendering reasonably competent assistance.[7] One of the landmark decisions in this area is *Beasley v. United States*, 491 F.2d 687, 696 (6th Cir. 1974) where the Court of Appeals for the Sixth Circuit held that "assistance of counsel required under the Sixth Amendment is counsel likely to render and rendering reasonably effective assistance." The Court went on to touch upon the conflict of interest question presented in the instant case by citing *Glasser v. United States*, 315 U.S. 60 (1942), and *McMann v. Richardson, supra*, in support of the holding: "Defense counsel must perform at least as well as a lawyer with ordinary training and skill in the criminal law and must conscientiously protect his client's interest undeflected by conflicting consideration." *Beasley v. United States, supra* at 696.

In *Glasser v. United States, supra* at 70, where the defendant was himself a former assistant United States At-

7. See *United States v. DeCoster*, 487 F.2d 1197, 1202-1203 (D.C. Cir. 1973); *Moore v. United States*, 432 F.2d 730, 736-737 (3d Cir. 1970); *Marzullo v. Maryland*, 561 F.2d 540, 543 (4th Cir. 1977); *King v. Beto*, 429 F.2d 221, 225 (5th Cir. 1970); *Beasley v. United States*, 491 F.2d 687, 696 (6th Cir. 1974); *United States ex rel. Williams v. Twomey*, 510 F.2d 634, 641 (7th Cir. 1974); *United States v. Easter*, 539 F.2d 663, 666 (8th Cir. 1976); *Brubaker v. Dickson*, 310 F.2d 30, 37 (9th Cir. 1962); *Risher v. State*, 523 P.2d 421 (Alaska 1974); *People v. White*, 183 Colo. 417, 514 P.2d 69 (1973); *State v. Kahalewai*, 54 Haw. 28, 501 P.2d 977 (1972); *State v. Williams*, 207 N.W.2d 98 (Iowa 1973); *Commonwealth v. Saferian*, 315 N.E.2d 878 (Mass. 1974); *State v. Hester*, 45 Ohio St. 2d 71, 79-80, 341 N.E.2d 304, 309-310 (1976); *State v. Thomas*, 203 S.E.2d 445 (W. Va. 1974); *State v. Harper*, 57 Wis. 2d 543, 205 N.W.2d 1 (1973).

torney, the Supreme Court held that the effective assistance of counsel requirement precluded a defense counsel's dual representation where a conflict of interest existed. The Court stated:

> ". . . The Assistance of Counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that the lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less than this, a valued constitutional safeguard is subsequently impaired."

Since *Glasser,* the courts, both State and Federal, have consistently held that a defendant is denied his constitutional right to counsel where the defendant's attorney also represents a witness to or victim of the crime with possible conflicts of interest. In *Castillo v. Estelle,* 504 F.2d 1243, 1244 (5th Cir. 1974), the United States Court of Appeals for the Fifth Circuit held as a matter of law that a defendant is deprived of effective representation by counsel when his attorney is representing in unrelated litigation a principal witness for the prosecution, who was the victim of the offense for which defendant was charged. In *Castillo,* there was no evidence that defendant became aware of his attorney's dual representation until the Prosecutor brought it out upon examination of the attorney's client-witness at trial. In Petitioners' case, the fact of their chief counsel's dual representation was totally suppressed even during the trial by both their chief counsel and the Prosecutor.

In *United States ex rel. Williamson v. LaVallee,* 282 F. Supp. 968 (E.D. N.Y. 1968), the defendant's attorney represented the chief prosecution witness who was under indictment. The Court held there was a conflict of interest

and it could not be said that such conflict was clearly non-prejudicial even though it was speculative whether any testimony was available to defendant which might have influenced the jury when weighed against the direct testimony of police officers. The following language from that opinion demonstrates the clear reasoning behind the Court's holding:

> "It takes no great imagination to detect the potential dangers that faced the petitioner by being defended by an attorney who was also representing an important prosecution witness. . . . The possibility existed that (the prosecution witness) thought that he could secure more favorable treatment from the District Attorney and from the courts if he cooperated with the State in the prosecution of another case. . . . That (the prosecution witness) might have fulfilled a bargain with the District Attorney is not an unreasonable inference to draw, and the existence of such an arrangement would establish a conflict of interest in (the prosecution witness). A second danger in being represented by an attorney who is also representing a prosecution witness is that the scope of examination of the witness by the attorney might be restricted by the fact that the attorney has learned confidential information about his client-witness which cannot be revealed." 282 F. Supp. 968, 971.

The considerations noted above are of special importance to the instant case. Petitioners' chief counsel Schmuck and his client-prosecuting witness Bevington had a prior lawyer-client relationship which was carried to the point of negotiating with the Prosecutor as to Bevington's involvement with the crime for which Petitioners were put on trial. Subsequently, Bevington was not indicted as an aider and abettor in the crime, which fact raises the

obvious inference that this was a result of a bargain reached between Bevington, his lawyer Schmuck, and the Prosecutor. In addition, there is evidence in the record that Petitioners' chief counsel Schmuck, who chose to cross-examine his own client, did not conduct a vigorous examination.[8] It is submitted that Schmuck did not thoroughly cross-examine Bevington in order to avoid exposing Bevington's full involvement in the crime either because he felt it would violate his confidential attorney-client relationship with him, or because his first loyalty was with Bevington and not with Petitioners whom he had been appointed to defend. Furthermore, it should be noted that Schmuck did not act alone in withholding from Petitioners information concerning his representation of Bevington. Throughout Petitioners' trial, including the examination of Bevington, the Prosecutor failed to disclose Schmuck's dual representation. This is in spite of the Prosecutor's personal knowledge and involvement with the conflicting representations arising from the earlier negotiations between Bevington, Schmuck and the Prosecutor. In this regard, we respectfully cite the following recent admonishment from the United States District Court for the Western Division of Texas in *United States v. Braniff Airways Inc.*, 428 F. Supp. 579, 583 (1977):

> "The courts have expressed a deep concern and rightly so that government attorneys be subject to exacting standards which negate conflicts of interest, and more so that their conduct may not suggest even an appearance of impropriety."

Moreover, an additional factor present in this case is the possibility that the financial and business considerations of Petitioners' chief counsel may have interfered

---

8. See footnote 2, *supra*.

with his representation of them. This concern was addressed in both *People v. Stovall*, 40 Ill. 2d 109, 239 N.E.2d 441 (1968) and *United States ex rel. Miller v. Myers*, 253 F. Supp. 55 (E.D. Pa. 1966). In *Stovall*, the Illinois Supreme Court held that a new trial should be granted where defendant's attorney personally represented the victim in unrelated civil matters, and is a member of a legal firm currently representing the victim, although defendant failed to show actual prejudice; and that while counsel did advise defendant of his representation of the victim, waiver will not be presumed where the record does not show that he was adequately informed of the significance of the conflict of interest. A similar holding was reached in *United States ex rel. Miller v. Myers, supra*, where the defendant's counsel represented the victim of the burglary in an unrelated civil suit. The concern for possible pecuniary conflict of interest was addressed by these courts as follows:

> "The entire situation could be very embarrassing for the lawyer who is naturally interested in having the legal business of the (victims), especially when they are much more able to compensate him for his services than the defendant. The circumstances are such that an attorney cannot properly serve two masters. . . . His defendant's right to counsel under the Constitution is more than a formality, and to allow him to be represented by an attorney with such conflicting interests as existed here without his knowledgeable consent is little better than allowing him no lawyer at all. See *Gideon v. Wainwright*, 372 U.S. 335 (1963). This situation is too fraught with the dangers of prejudice, prejudice which the cold record might not indicate, that the mere existence of the conflict is sufficient to constitute a violation of relator's rights whether or not it in fact influences the attorney or

the outcome of the case." *United States ex rel. Miller v. Myers,* 253 F. Supp. 55, 57; *People v. Stovall,* 40 Ill. 2d 109, 112-113.

Here, without delving further into the cold record, it is submitted that Petitioners' chief counsel demonstrated where his true allegiance was when he went on to represent State's witness Bevington in a related civil action.[9] Through this arrangement, Schmuck may have been able to secure one fee from Bevington for his work before the Prosecutor, a second fee from the State for his representation of Petitioners, and a third fee from Bevington for his handling of the civil action.

The gravity of the conflict of interest present in this case is best summarized by comparing its facts with the facts and holding in *United States v. Jeffers,* 520 F.2d 1256 (7th Cir. 1975) (hereinafter cited as *"Jeffers."*) In *Jeffers,* the Court of Appeals for the Seventh Circuit, per then Circuit Judge Stevens, addressed an effective assistance of counsel issue where a criminal defendant was represented at trial and on appeal by a lawyer whose firm had previously represented a government witness called at defendant's trial. Initially the Court noted that: "As a matter of procedure . . . both defense counsel and the trial judge properly addressed the issue as soon as it arose." *Jeffers, supra* at 1263. Footnote 11 included in said opinion states:

> "Defense counsel is obligated to bring to the attention of his client and the court any possible conflict of interest that develops at trial as soon as he becomes aware of such a situation.
>
> "American Bar Association Standards For Criminal Justice, The Defense Function §3.5(a) (1971):

9. See footnote 5, *supra.*

> "'At the earliest feasible opportunity defense counsel should disclose to the defendant any interest in or connected with the case or other matter that might be relevant to the defendant's selection of a lawyer to represent him.'" *Jeffers, supra* at 1263.

The Court stated Jeffers' attorney "satisfied this obligation by approaching the bench and informing the court of the prior representation problem as soon as he learned (the government witness) would testify." *Jeffers, supra* at 1263, fn. 11. Petitioners' attorney Schmuck did not meet the standard the Court set. Here, even though Mr. Schmuck, not just his law firm, represented Bevington, he did not disclose to Petitioners this connection at the earliest opportunity which presented itself, i.e., when Schmuck was appointed by the State to represent Petitioners. Furthermore, neither Schmuck nor the Prosecutor, who was equally knowledgeable of the Schmuck-Bevington relationship, so informed the Court when they were examining Bevington. It is submitted that not only did Schumck's representation fail to meet relevant ABA Standards, but that it also conflicted with Ethical Consideration 5-1 and 5-14 of the Code of Professional Responsibility.[10] We are, therefore, presented in the instant case

10. EC 5-1. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

EC 5-14. Maintaining the independence of professional judgment required of a lawyer precludes his acceptance or continuation of employment that will adversely affect his judgment on behalf of or dilute his loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

with a situation where even Petitioners' procedural Sixth Amendment rights were violated. Since Petitioners did not know of their chief counsel's conflict of interest, there was certainly no waiver of this violation. A waiver of a constitutional right requires the "intentional relinquishment or abandonment of a known right." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

After analyzing the procedural development of the case, the *Jeffers* opinion emphasized that it was not a case involving an existing personal relationship between the defendant's counsel and the government witness. The Court then stated that:

> "The courts have frequently held that the existence of (an on-going relationship between an adverse witness and a lawyer), with the inherent attendant hesitancy of counsel to completely cross-examine a current client, creates a very real conflict of interest and requires a mistrial if the conflict is disclosed, or a new trial, if the conflict is disclosed only later." *Jeffers, supra* at 1264, fn. 13.

In the present case, there was an on-going relationship between adverse witness Bevington and Petitioners' attorney Schmuck, which was not discovered until the cross-examination of Bevington in the later trial of Petitioners' co-defendants. There appears to have been a deliberate concealment of this relationship by both Schmuck and the Prosecutor which could only be rectified through the granting of a new trial for Petitioners.

As this Court noted in *Faretta v. California*, 422 U.S. 806, 826 (1975), "the colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers." If Americans now believe in the basic

benefits of the Bill of Rights and their right to the assistance of counsel, this trust should not be allowed to be destroyed by the actions of a few members of the bar who may not follow its ethical requirements. A defendant has the right to know that his attorney will exert every possible defense in his behalf and will not during a trial attempt to cover up for another client whose interest he is concerned with protecting. It should be stated herein, that client-witness Bevington provided the gasoline for the admitted arsonist Delasandro; that Bevington is not in the business of selling gasoline; that this transaction took place during the dark hours of the two days preceding the fire; and that two trucks were used in securing this gasoline to prevent detection.

In the instant case, the Court of Appeals for Stark County, Ohio, held that "while the propriety of (chief counsel's) conduct is questionable, there existed no conflict of interest that would render (him) ineffective as an advocate of the appellants' rights."[11] If this decision is permitted to stand, Petitioners and defendants similarly situated will be denied their legitimate expectation that the effective assistance of counsel means access to "a vigorous advocate having the single aim of acquittal by all means fair and honorable—(and not one) hobbled or fettered or restrained by commitments to others." *Porter v. United States*, 298 F.2d 461 (5th Cir. 1962). Consequently, this Court should grant certiorari in order to reassert the fundamental Sixth Amendment rights Petitioners have been denied.

---

11. See Decision of the Court of Appeals for Stark County, Ohio, Appendix A, page A1.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

TOM BORCOMAN
Stark County Public Defender's Office
Canton, Ohio 44702

RALPH W. ROSS
JOSEPH W. CALABRETTA
5292 Fulton Drive, N.W.
Canton, Ohio 44718
(216) 499-8960

Attorneys for Petitioners

APPENDIX A

DECISION AND JOURNAL ENTRY OF THE COURT OF APPEALS OF STARK COUNTY, OHIO

(Filed August 24, 1977)

C.A. No. 4554

THE COURT OF APPEALS
FOR STARK COUNTY, OHIO

STATE OF OHIO,
Plaintiff-Appellee,
v.
GARY EVERETT THOMPSON
and
MYRON LESTER TILTON,
Defendants-Appellants.

Appeal From Judgments Entered in the Court of Common Pleas of Stark County, Ohio
Case No. 76-6169

DECISION AND JOURNAL ENTRY

This cause was heard June 20, 1977, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

HUNSICKER, *J.*

On March 31, 1976, an indictment was filed in the Common Pleas Court charging Gary Everett Thompson and Myron Lester Tilton, along with two other men, with three counts of aggravated murder with specifications of aggravated circumstances, and three counts of complicity in the commission of aggravated murder with specification of an aggravated circumstance.

In due course, Thompson and Tilton were arraigned, entered pleas of not guilty and being unable to employ counsel the trial court appointed attorneys for both defendants. At the request of each defendant, attorney Harry Schmuck and attorney Tom Borcoman of the Public Defender's office were appointed as counsel for Thompson and Tilton.

Thompson and Tilton signed waivers of a jury trial and thereby expressed a desire to be tried to three common pleas judges. A trial was had and on July 6, 1976, Thompson and Tilton were each found guilty by unanimous judgment of the trial judges of three counts of aggravated murder and the trial judges unanimously found Thompson and Tilton each guilty of committing the offenses while committing aggravated arson.

Psychiatric examination of Thompson and Tilton was conducted under provisions of §2929.03, R.C., and §2947.06, R.C.

On October 19, 1976, motions for a new trial filed by both Thompson and Tilton were overruled. Sentence was then imposed. Thompson and Tilton were each sentenced to the Southern Ohio Correctional Institution in Lucasville, Ohio, for the remainder of their natural life on each of the three counts of aggravated murder.

Notice of appeal to this court was filed November 9, 1976.

As the trials were held jointly, so too the appeals were argued jointly. The appellants filed six assignments of error as follows:

"1. The trial court erred in finding aggravated murder was supported by the evidence, due to complete failure of the evidence to show a purposeful causing of death.

"2. The trial court erred in overruling defendants-appellants' motion for a new trial based upon newly discovered evidence for reason that said evidence was such that it placed a duty upon the trial court to grant a new trial and its failure to do so was an abuse of discretion.

"3. The defendants-appellants' rights to cross-examine and confrontation was effectively denied.

"4. The defendants-appellants state that their rights under the Sixth Amendment and the Fourteenth Amendment to the United States Constitution were violated wherein they were deprived of the effective assistance of counsel during the trial of this matter, in that chief counsel, appointed by the Common Pleas Court of Stark County, Ohio, had a conflict of interest in that said chief counsel represented state's witness George Bevington, prior to the trial, during the trial, and after the trial, all in violation of the defendants-appellants' rights.

"5. The trial court erred in not allowing the defendants-appellants the opportunity to testify under oath during a hearing on the motion for a new trial based upon newly discovered evidence.

"6. The judgment of the three-judge panel is against the manifest weight of the evidence and contrary to law."

On the evening of Sunday, November 30, 1976, the LaCuisina restaurant on Lincoln Way East, Massillon, Ohio, was destroyed by fire and explosion. Investigation by the authorities resulted in the indictment above mentioned which was also against Louis Battista, the owner of LaCuisina and Joseph Paone, who assisted Battista in the management of the business.

One Fred Delesandro testified that, by plea bargaining for a five year arson guilty plea, he agreed to tell the manner in which the restaurant was destroyed. Fred Delesandro, an admitted arsonist and a man with a criminal record said that: six months before the burning of the LaCuisina the defendant-appellant, Tilton, wanted to see him at the SouthGate shopping center about a missing brother of Tilton; Mike Scott, a friend, rode with Delesandro to SouthGate where they met appellant Tilton (herein called Tilton) and Gary Thompson. At that place and time a discussion began about the burning of a restaurant and the price that would be paid for the burning. Delesandro said he would have to examine the location. After he had that inspection completed, Delesandro said he and defendant-appellant, Thompson (called Thompson herein) who also went by the alias of Stewart, purchased 210 plastic five gallon containers on the east side of Cleveland, Ohio.

Delesandro bought gasoline to fill 90 of the plastic containers which were used to burn and blow up the restaurant. George Bevington, an independent contractor for excavations and septic tank work, helped Delesandro purchase the gasoline. Bevington said Delesandro owned

a farm and did construction work so he did not inquire as to the need for the gasoline. Delesandro said he, Thompson and Tilton went to the LaCuisina on Sunday afternoon, November 30, 1975. Thompson brought all of the gasoline to the restaurant building in a panel truck and Tilton drove Delesandro in Tilton's automobile to the place. They entered and first shut off motors and pilot lights, placed the plastic containers in strategic places inside the building, made fuse or trailers of strips of shredded paper then punched holes in the plastic containers with an ice pick. Thompson went out of the place to start their "get away" automobile. Delesandro was to set the paper trailers or fuse on fire. He had sent Tilton out of the building to get in the "get away" automobile which Thompson had started. Delesandro did not light the paper trailers for an explosion occurred in the basement. Delesandro believed this was a gasoline explosion caused by sparks from a large electric motor which they had not shut off. Delesandro hurried from the building, and got in the automobile with Thompson and Tilton. Thompson drove east a few city blocks then turned, so as to circle the streets to come toward the LaCuisina restaurant from the west. They saw that the fire department was coming to the fire.

Delesandro, Thompson and Tilton after watching the burning building and seeing the firemen in and about the structure, left the scene. Before Delesandro, Thompson and Tilton left the building they took some chairs, silverware, tablecloths, napkins and other articles. Some of the articles were later recovered in a ditch or strip mine excavation in Tuscarawas County, south of Canton, along with some plastic pieces of containers that Delesandro said Thompson cut up and threw on the side of the road. Many of these articles and pieces of plastic were recovered and used as exhibits at the trial.

The investigation by the authorities led to knowledge of the purchase of gasoline, the purchase of plastic containers by two men, one Delesandro, the other Stewart (the alias Delesandro said Thompson used) and, the further fact that one of the neighbors of the restaurant saw a panel truck and automobile at the LaCuisina on Sunday, November 30, being the Sunday after Thanksgiving Day (the restaurant was closed on Sundays) helped fix, in the minds of the jurors, the testimony of Delesandro. An F.B.I. agent testified that he saw a man and Thompson with Delesandro and Mike Scott on the day Delesandro said the parties discussed the arson job. This further substantiated the fact to be that the story told by Delesandro was the truth.

The evidence is overwhelming that Thompson and Tilton, along with Delesandro, planned and executed the destruction of the LaCuisina restaurant on Sunday, November 30, 1975. The finding by the judicial panel of that fact is not against the manifest weight of the evidence. We shall come to the question of the judgment in the order set out in the brief of the appellants.

The chief question in this case concerns the meaning and intent of the word "purpose" as used in §2903.01(B), R.C., which says in part:

> "(B) No person shall purposely cause the death of another while committing * * * aggravated arson or arson, * * *."

The case most often cited in the situation we have here is *Turk v. State,* 48 Ohio App. 489 (1934) which, on appeal, was affirmed when only six judges of the Supreme Court of Ohio considered that case and in reaching a decision the judges divided three to affirm the judgment of the court of appeals and three to reverse the judgment

of the court of appeals and affirm the judgment of the court of common pleas.

In that state of the *Turk* case, it behooves us to examine this case to determine if, on the facts, these defendants can be said to have intended the natural and probable consequences of their unlawful act. When this fire was set at the La Cuisina restaurant did the defendants intend the result?

Given the danger that existed from such a large quantity of highly explosive material, was not there a great likelihood of a fireman fighting the fire being severely injured or killed?

Are the deaths in this case so remote, as was said in the *Turk* case, that such deaths could not be a natural and probable consequence of the act of arson? How do you show purpose such as we have here for it is a rare call indeed for a defendant to step forward and say I intended to kill? Purpose certainly is shown by the acts, conduct and the knowledge exhibited in carrying out whatever is done by the person.

As was quoted in *State v. Fugate,* 36 Ohio App. 2d 131 at 132 (1973) where the court quotes with approval the determination of other courts in saying:

> "[quoting State v. Huffman, 131 Ohio St. 27]: 'The intent of an accused person dwells in his mind. Not being ascertainable by the exercise of any or all of the senses, it can never be proved by the direct testimony of a third person and it need not be. * * *'
>
> " 'It is the law of Ohio that an intent to kill may be presumed where the natural and probable consequence of a wrongful act is to produce death, and such intent may be deduced from all the surrounding

circumstances, including the instrument used to produce death, and the manner of inflicting a fatal wound.' * * *"

These defendants, Thompson and Tilton, were direct participants in all of the action taken to destroy the LaCuisina restaurant. They placed or helped place the explosive material at strategic locations in the building, but knowing the danger to their own lives they extinguished all possible sources of ignition. These defendants hastened from the building and the vicinity not only from fear of detection but also for their lives. Knowing that the firemen would approach in close proximity to the building to prevent a spread of the fire, these defendants returned to a point near the restaurant. From the west side of the building these appellants saw firemen in that location. It was the west wall that, as a result of the explosion, fell on the firemen and caused their death. Knowing all these factors and resting secure in the knowledge that the large quantity of gasoline would explode, appellants made no effort to warn anyone of the danger but hastened away from the scene of the fire.

Under the facts of this case, the natural and probable consequence of the conscious acts of Thompson and Tilton was the death or very serious injury of the firemen. Delesandro, Thompson and Tilton were not interested in the firemen but only in the total destruction by fire of the LaCuisina restaurant, regardless of the consequences.

While the act of burning the structure alone may not be sufficient to infer intent, when combined with the appellants' knowledge that others were actually exposed to the great danger they created, the element could be presumed from the natural and probable consequences of their acts. Their deliberate actions went beyond mere

recklessness. The requirements of the statute have been fulfilled for these appellants, Thompson and Tilton, by their course of conduct intended the consequences of their action.

The trial judges were justified in finding the purpose to cause the death of another as required by §2903.01(B), R.C.

A discussion of homicide resulting from arson may be found in 87 A.L.R. 414, 50 A.L.R. 3d 411 and 40 Am. Jur. 2d Homicide §79 note 11. The statute in Ohio is very different from that found in other states that have felony murder statutes.

We reject assignment of error number one.

There was testimony by Delesandro that at the meeting at SouthGate the question of James Tilton's disappearance was inquired about. That does not automatically absolve Myron Tilton. A new trial is granted only for good cause. The matters discussed in appellants' assignment of error number two do not justify a trial court ordering a new trial to take place. There is no abuse of discretion shown within the rule set out in the second paragraph of the syllabus of *State v. Williams*, 43 Ohio St. 2d 88 (1975). We have here a collateral matter not involved in the main issue.

We reject assignment of error number two.

Delesandro responded to all questions regarding his criminal conduct covering a period of years except one and that one instance occurred only when the presiding trial judge reminded Delesandro, as he should have, of his rights under the Fifth Amendment. The long list of convictions and participation in criminal activities did not deter the judges from believing Delesandro in the instant

case as they had a right to believe him. The presiding trial judge's actions to preserve a record free from error is not a matter about which Thompson and Tilton should complain. Their counsel did a good job in unfolding the pages of Delesandro's past.

We reject assignment of error number three.

The claim of conflict of interest is raised herein because a witness, George Bevington, both purchased for, and sold, gasoline to Delesandro which Delesandro later used in the arson scheme. This witness was a longtime friend of and client of Mr. Schmuck who, along with Mr. Borcoman represented the defendants, Thompson and Tilton. Since *Glasser v. United States,* 315 U.S. 60, 76 L. Ed. 680 (1941) there are many cases which claim ineffective counsel as the reason a new trial should be granted a convicted defendant. Mr. Schmuck said he informed his clients of his connection with Mr. Bevington. No relationship between Bevington and the appellants was ever established. Bevington was not implicated in any crime arising out of the burning of the restaurant. The appellants' contention that Mr. Schmuck was attempting to protect the interests of Bevington as well as their own is not well taken. His role in the prosecution was minimal, relating only to the purchase of gasoline by Delesandro alone. Thus, while the propriety of Mr. Schmuck's conduct is questionable, there existed no conflict of interest that would render Mr. Schmuck ineffective as an advocate of the appellants' rights. The fact that he had represented the witness in the past does not *per se* create a conflict. Neither present counsel on appeal nor co-counsel at the trial have pointed to any portion of the record indicating a failure to protect the rights of the accused. In *State v. Hester,* 45 Ohio St. 2d 71 (1976) paragraph 4 of the syllabus says:

> "4. The test in determining if the accused had effective retained counsel is whether the accused, under all the circumstances, including the fact that he had retained counsel, had a fair trial and substantial justice was done."

After our reading of the transcript of proceedings, examining the transcript of docket and journal entries and the other papers in this case we must conclude that the requirements of *State v. Hester, supra,* have been met. We believe the tests set out in *Beasley v. United States,* 491 F 2d 687 (1974) have also been complied with.

We reject assignment of error number four.

Thompson and Tilton complain that they were not permitted to give oral testimony at a hearing on the motions for a new trial.

Contrary to what counsel asserts, the presiding judge of trial court, when counsel asked his client Thompson to take the witness stand said:

> "Won't be necessary, we have his affidavit also. Unless you're telling me they are going to say something different than what they have already said."

The counsel, who was pressing the matter of oral testimony on the motion for a new trial, never answered that question but said:

> "Let the record state this court, in its opinion, is depriving these defendants the right to fully brief this court the rights under the law.

Rules of Criminal Procedure 33 set out the grounds for a new trial, which is by motion. Crim. R. 57(B) provides for procedure not otherwise specified and Crim. R. 47 says:

"To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition."

The trial judges violated no rules of criminal procedure. From the facts provided, the court did not deny the appellants the right to testify, but merely stated that the testimony given must be something other than what was already provided to the court by way of affidavits. The appellants were not denied the opportunity to testify. They were merely denied the opportunity to repeat orally testimony already possessed by the court. Since no prejudice resulted from the denial, there is no merit whatsoever in this assignment of error.

We reject assignment of error number five.

At the beginning of this memorandum, we set out in considerable detail the facts of this case. From those facts as detailed in the record and the testimony before us, we conclude that the judgment is not against the manifest weight of the evidence. See, *State v. Flonnory*, 31 Ohio St. 2d 124 (1972).

It is clear that sufficient evidence was presented at the trial to support the appellants' conviction. What the appellants are contesting in this assignment of error is the credibility of Delesandro as a witness. Since the issue of credibility is a question of fact to be decided by the triers of fact, the Court of Appeals cannot substitute its judgment for that reached by the trial court. *Trickey v. Trickey*, 158 Ohio St. 9 (1952); *In re Tilton*, 161 Ohio St. 571 (1954).

We reject assignment of error number six.

The judgment of the trial court as to each defendant is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Court of Common Pleas, to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellants.

Exceptions.

/s/ JOHN V. CORRIGAN
Presiding Judge
—for the court—

CORRIGAN, *P.J.* and VICTOR, *J.* concur.

(Corrigan, P.J., of the Eighth District Court of Appeals, and Victor, J., of the Ninth District Court of Appeals sitting pursuant to assignment under authority of Article IV §5(A)(3) Constitution, and Hunsicker J., retired Judge of the Ninth District Court of Appeals, sitting pursuant to assignment under authority of Section 6(C), Article IV, Constitution.)

APPENDIX B

JUDGMENT ENTRY OF THE SUPREME COURT OF OHIO

(Dated November 25, 1977)

No. 77-1166

THE SUPREME COURT OF OHIO
THE STATE OF OHIO
CITY OF COLUMBUS

STATE OF OHIO,
Appellee,

vs.

GARY EVERETT THOMPSON *et al.*,
Appellants.

Appeal From the Court of
Appeals
for Stark County

This cause, here on appeal as of right from the Court of Appeals for Stark County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

APPENDIX C

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY RECORD

(Dated November 25, 1977)

No. 77-1166

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO
CITY OF COLUMBUS

STATE OF OHIO,
Appellee,

vs.

GARY EVERETT THOMPSON *et al.*,
Appellants.

Motion for Leave to Appeal
From the Court of Appeals
for Stark County

It is ordered by the Court that this motion is overruled.

APPENDIX D

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING

(Dated December 15, 1977)

No. 77-1166

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO
CITY OF COLUMBUS

STATE OF OHIO,
Appellee,

vs.

GARY EVERETT THOMPSON *et al.*,
Appellants.

REHEARING

It is ordered by the court that rehearing in this case is denied.

APPENDIX E

MOTION FOR NEW TRIAL FILED IN COMMON PLEAS COURT

(Filed October 14, 1976)

Case No. 76-6169

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO
SS:
STARK COUNTY

THE STATE OF OHIO,
Plaintiff,

vs.

GARY EVERETT THOMPSON

and

MYRON LESTER TILTON,
Defendants.

MOTION FOR NEW TRIAL

Now come the defendants, Gary Everett Thompson and Myron Lester Tilton, pursuant to Criminal Rule 33, and moves this Honorable Court for a new trial based on newly discovered evidence which the defendants could not have with reasonable diligence discovered and produced at their trial.

The new evidence and matters complained of herein were not discovered by the defendants until after the trial

of Louis Battista and Joseph Paone on or about August 27, 1976.

Defendants, in support of said Motion, do hereby attach the following:

1. Affidavit of Gary Everett Thompson.

2. Affidavit of Myron Lester Tilton.

3. Transcript of record of witness George Bevington given during the trial of Louis Battista and Joseph Paone which has been filed.

4. Transcript of testimony by George Bevington in the trial of this cause.

Defendants state that their rights under the Sixth Amendment and Fourteenth Amendment to the United States Constitution were violated, wherein they were deprived of the effective assistance of counsel in that one of their counsel appointed by this Honorable Court had a conflict of interest in that said chief counsel represented the State's witness, George Bevington, and that this fact was not revealed to either of these defendants until same was disclosed by Bevington during the Battista-Paone trial.

WHEREFORE, defendants, Gary Everett Thompson and Myron Lester Tilton, move that a hearing be held on this Motion and that said Court grant said defendants a new trial according to law.

/s/ RALPH W. ROSS
5292 Fulton Drive, N.W.
Canton, Ohio 44718
Telephone: 499-8960
Attorney for Defendants, Gary Everett Thompson and Myron Lester Tilton

APPENDIX F

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS IN THOMPSON CASE

(Filed October 19, 1976)

Case No. 76-6169

IN THE COURT OF COMMON PLEAS

STATE OF OHIO:
SS:
STARK COUNTY:

THE STATE OF OHIO,
Plaintiff,

vs.

GARY EVERETT THOMPSON
Defendant.

JUDGMENT ENTRY

This matter came on for Hearing on the Motion of the Defendant, GARY EVERETT THOMPSON, for a new Trial, and the Court, having considered same, and having considered all the testimony and evidence presented on behalf of the Defendant pursuant to said Motion, finds said Motion to be not well taken, and the same is hereby ordered overruled.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant, GARY EVERETT THOMPSON'S Motion for a new Trial is overruled.

/s/ WM. A. MORRIS
/s/ ROBERT G. TAGUE
Judges

APPENDIX G

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS IN TILTON CASE

(Filed October 19, 1976)

Case No. 76-6169

IN THE COURT OF COMMON PLEAS

STATE OF OHIO:
SS:
STARK COUNTY:

THE STATE OF OHIO,
Plaintiff,

vs.

MYRON LESTER TILTON,
Defendant.

JUDGMENT ENTRY

This matter came on for Hearing on the Motion of the Defendant, MYRON LESTER TILTON, for a new Trial, and the Court, having considered same, and having considered all the testimony and evidence presented on behalf of the Defendant pursuant to said Motion, finds said Motion to be not well taken, and the same is hereby ordered overruled.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant, MYRON LESTER TILTON'S Motion for a new Trial is overruled.

/s/ WM. A. MORRIS
/s/ ROBERT G. TAGUE
Judges